

REMARKS

The Examiner asserts that restriction of the pending claims into one of the following eight groups is required under 35 U.S.C. § 121:

- Group I: Claims 1-19, 21-22, directed to an anti-IGF-IR antibody, a composition comprising the antibody and cell line that produces it;
- Group II: Claim 20, directed to a method of making an antibody by immunization;
- Group III: Claim 23, directed to method of diagnosing a tumor;
- Group IV: Claims 24 and 26 in part, directed to a method of treating cancer by administration of an antibody;
- Group V: Claims 25 and 26 in part, directed to a method of treating a patient with an antibody;
- Group VI: Claims 27-31, directed to a nucleic acid, vector, host cell, and method of expression such;
- Group VII: Claim 32, directed to a non-human transgenic animal; or
- Group VIII: Claim 33, directed to a method of treating a subject by administration of a nucleic acid.

The Examiner asserts that the inventions are distinct from each other, and states that applicant must elect one group of inventions for examination.

Applicants traverse the proposed restriction between the inventions of Groups I, III, IV and V. For a restriction between patentably distinct inventions to be proper, the inventions must be independent or distinct as claimed and also must pose a serious burden on the Examiner if examined together. MPEP § 803. "[I]f the search and examination of an entire application can be made without serious burden, the examiner must

examine it on the merits, even though it includes claims to distinct or independent inventions.” Id.

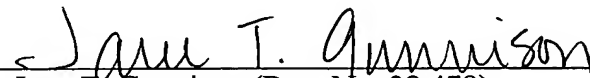
The claims of proposed Group I are directed to an anti-IGF-IR antibody, a composition comprising the antibody and cell line that produces the antibody. The inventions of proposed Groups III - V are directed to methods comprising the antibody of Group I. A search conducted for proposed Group I would necessarily be co-extensive with a search for Groups III - V; no additional searches are required. The grouping of proposed Groups III - V with proposed Group I, thus, poses no additional search burden, much less a serious search burden on the Examiner. Accordingly, Groups I, III, IV and V should be examined together.

Applicants request that the claims of Groups I, III, IV and V be examined together because there is no serious search burden for the Examiner to examine the subject matter of these four groups together. However, pursuant to 37 C.F.R. § 1.143, under the groups drawn by the Examiner, applicants provisionally elect, with traverse, the claims of Group I for initial substantive examination.

Application No. 10/038,592
Response dated April 12, 2004
In Response to March 10, 2004 Restriction Requirement


This election is made expressly without waiver of applicants' rights to continue to prosecute and to obtain claims to the non-elected subject matter either in this application or in other applications claiming priority here from.

Respectfully submitted,

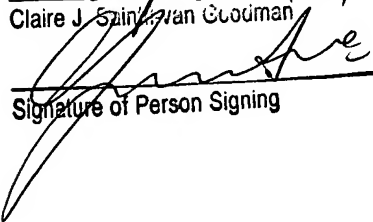


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